

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0223P

Sales & Use Tax

Calendar Years 1995, 1996, & 1997

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the penalty assessed.

STATEMENT OF FACTS

The penalty was assessed on an use tax assessment resulting from a Department audit for the calendar years 1995, 1996, & 1997.

The taxpayer designs and manufactures a variety of high technology analytical products which are used in industrial processing, governmental and education research. The taxpayer operates a sales and service office in Indianapolis, Indiana. No manufacturing is performed in Indiana.

DISCUSSION

The penalty is the result of use tax assessed on the purchase of service parts and materials.

The taxpayer argues the penalty should be waived as the taxpayer has been timely in reporting and remitting tax liabilities, and, the assessment is minor compared to the overall tax remitted.

The Department disagrees. The assessment is material in that no use tax was remitted to the Department for the audit period. No use tax was remitted because the taxpayer does

not have a self-assessing use tax reporting system. In addition, the assessment is a repeat issue from the two previous audits.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

In the opinion of the Department, the Department feels the taxpayer was inattentive. Inattention is negligence, and negligence is subject to penalty. As such, the penalty protest is denied.

FINDINGS

The taxpayer's penalty protest is denied.

TB/RAW/JMS 991210